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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ANTHONY LANE,

Defendant and Appellant.

D042554

(Super. Ct. No. SCD171751)

APPEAL from a judgment of the Superior Court of San Diego County, William D. Mudd, Judge. Affirmed.

Michael Anthony Lane entered a negotiated guilty plea to possessing cocaine base for sale (Health & Saf. Code, § 11351.5) and admitted a prior conviction of possessing cocaine base for sale (Health & Saf. Code, § 11370.2) and a strike prior (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, 668) after the trial court denied a motion to suppress evidence. (Pen. Code, § 1538.5.) The court sentenced Lane to prison for nine years: double the three-year lower term for possessing cocaine base for sale with a strike prior

enhanced three years for the prior conviction of possessing cocaine base for sale. Lane contends the trial court erred in denying his motion to suppress evidence.

FACTS

At approximately 11:30 p.m. on December 13, 2002, San Diego Police Officer George Cesena stopped Lane after Lane failed to stop at a stop sign. Cesena asked to see Lane's driver's license, registration and proof of insurance. Lane responded that he left his girlfriend's home in a rush to get her ice cream and that he left his wallet there. Lane's cellular telephone rang and it was a woman identified as his girlfriend. Lane handed the telephone to Cesena and she told Cesena that Lane had not just left her home and she knew nothing about his wallet. Cesena conducted a records check and learned Lane's driver's license had been suspended. Cesena returned to Lane's car and saw him trying to tuck a plastic bag that contained what appeared to be a controlled substance into his shirtsleeve. Cesena intended to arrest Lane for possessing a controlled substance, running the stop sign and driving with a suspended license but called for a backup unit. After the backup officer arrived, Cesena removed Lane from his car and placed him in handcuffs. Cesena found additional cocaine base in Lane's pocket. The backup officer searched the car's interior and found a bag containing marijuana, a razor blade, and prescription drugs. Cesena testified that the area was well lit because it was known for narcotics use.

Lane testified that he gave Cesena his wallet, told him his driver's license was suspended, and Cesena told him he was being arrested for domestic violence. He testified that Lane found the baggie containing rock cocaine in his sleeve when he patted

him down. Cesena did not mention drugs before Lane got out of the car. Lane testified that the drugs were not sticking out of his sleeve when Cesena approached the car.

DISCUSSION

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) Here, while denying the motion to suppress, the trial court said:

"The court having heard the evidence in this case, having listened to the testimony of Officer Cesena and Mr. Lane, the court resolves every dispute in this matter in favor of Officer Cesena.

"In this matter, the court did not find Mr. Lane to be a credible witness. First of all, he was feeling the effects of cocaine base: he had only used it within 10 to 15 minutes prior to the stop. He claims he did not have a lapse of memory. He claims it did not affect his ability to relate, recall and recollect. Those are his claims. But there is a reason why people do take controlled substances.

"In this matter, the court does note that Mr. Lane is substantially larger in build than Officer Cesena, and Officer Cesena indicated he did call for a backup unit, based upon defendant's build and demeanor.

"The officer indicated that he did intend to arrest Mr. Lane for possession of controlled substances, a moving violation, driving on a suspended license.

"In this matter, the court will deny the defendant's motion to suppress the evidence, finding that there was a legal basis for the continued detention as well as the [probable] cause to arrest the defendant, as well as plain view of the controlled substance and search incident to arrest."

In determining whether the trial court's findings are supported by substantial evidence, we must not usurp the trier of fact's assessment of credibility.

"'Although an appellate court will not uphold a judgment or verdict based upon evidence inherently improbable, testimony which merely discloses unusual circumstances does not come within that category. [Citation.] To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions. [Citations.] Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.]' [Citations.]" (*People v. Thornton* (1974) 11 Cal.3d 738, 754, disapproved on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 684, fn. 12.)

Lane argues the officer's testimony that the plastic bag containing cocaine base protruded from his shirtsleeve and was in plain view is implausible because it was dark outside and the officer did not use a flashlight and, in his police report, Cesena said the reason for the arrest was an outstanding warrant for domestic violence. Lane is mistaken. Cesena testified the arrest took place in a well-lit parking lot and it was not dark. Cesena reviewed the police report at defense counsel's request and thereafter testified that the police report said that when Lane stepped from his car, Cesena advised him he was being arrested for possessing a controlled substance. The court believed Officer Cesena, not Lane who admitted he used rock cocaine 10 minutes before the stop.

Lane also argues that the evidence found in the container in the car was illegally seized since he was in handcuffs in custody outside the car when the search occurred.

However, in *New York v. Belton* (1981) 453 U.S. 454, the United States Supreme Court held:

"[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.

"It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach." (*Id.* at p. 460, fns. omitted.)

The trial court here did not err in denying the motion to suppress evidence.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

McDONALD, J.

AARON, J.